

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2605 of 1989

with

SPECIAL CIVIL APPLICATION No 1867 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

ABDUL MAJID SULEMAN

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Appearance:

MR HC Raval for the Corporation.

Mr PM Thakkar for workman.

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/1999

ORAL JUDGEMENT

Heard Mr. Raval, the learned advocate for the petitioner and Mr. Thakkar, the learned advocate for the

respondent workman. The facts of the present petitions are that the respondent workman was working as driver in the ST Corporation since many years at Upleta Depot of Rajkot Division. The charge against the respondent workman was that on 6.4.84 when the respondent was on route from Porbandar to Ahmedabad in Luxury Bus, he has not attended and has not remained present without getting his leave sanctioned and, therefore, said schedule of Porbandar to Ahmedabad was late by about thirty minutes and it has also resulted in payment of Over Time to another driver of the petitioner Corporation for 12 to 14 hours. The further charge against the respondent was that of remaining absent upto 26th April, 1984 and, therefore, on the basis of the said charge of remaining absent from 6th April, 1984 to 26th April, 1984, chargesheet was issued against the respondent and after completion of the departmental inquiry, the respondent workman was dismissed from service on 17.09.84 by the petitioner corporation which order was challenged by the respondent workman before the labour court by filing reference No. 367 of 1987. Before the labour court, the respondent was examined at Exh. 20 and he deposed that in spite of the efforts made by him, he has remained unemployed and the petitioner corporation has not led any oral evidence before the labour court to controvert the same. The petitioner has produced relevant papers of departmental inquiry before the labour court. After appreciating the material brought before it, the labour court came to the conclusion that during the period of absence, the respondent has not submitted any leave report and not produced the medical certificate but at the time when he reported for duty on 27th April, 1984, the respondent had produced the medical certificate of Dr. A.M.Sidi from Junagadh wherein it was mentioned that the respondent was suffering from typhoid which required rest for some time. The labour court has come to the conclusion that the charge of remaining absent without leave was found to be proved and the said allegations were admitted by the respondent before the corporation. The respondent had completed service of about nine years at the time of passing of the order of dismissal. The labour court, after appreciating the evidence before it including past record of the respondent, came to the conclusion that though the charge levelled against the respondent was found to be proved, the punishment of dismissal, looking to the proved misconduct, was harsh arbitrary and unjustified. Therefore, while exercising the powers under sec. 11A of the Industrial Disputes Act, 1947, the labour court has ordered reinstatement of the respondent with continuity of service with 25% of the back wages for the intervening period. Said award was

passed by the labour court on 10.1.1989. The respondent workman has also challenged the said award of the labour court by filing special civil application no. 1867 of 1989 in so far as the denial of the backwages to the extent of 75% is concerned. Both the petitions are admitted by this court on 5.4.1990. At the time of issuing rule, this court has not granted any stay in the petition of the corporation either against the reinstatement or against the back wages.

I have heard both the learned advocates for the parties. I have also considered the submissions made by both the sides.

Considering the facts and circumstances of the case, the labour court has taken the view that the action of dismissal from service is harsh and unjustified. The labour court has also considered one decision of this court in case of Vijay Mulji Jasani versus GSRTC in special civil application no. 6143 of 1984. While directing reinstatement of the workman, the labour court has denied 75% of the back wages by way of punishment to the respondent for the misconduct which was found to be proved and admitted by the respondent workman. The labour court has also considered the past record and reached the conclusion that the past record is not such good and in past, some defaults were committed by the respondent workman. The labour court has also considered that the dispute was raised after one year and three months and also considered the present misconduct, default card and the labour court has, therefore, withheld 75 percent of the backwages while directing reinstatement of the workman.

For the misconduct of remaining absent for some days, the apex Court has considered the penalty of dismissal is harsh, and unjustified as per the decision reported in AIR 1994 SC 215 and 1999 SCCLIC 666. In both the said decisions, the case of misconduct relating to the absence was examined by the apex court and the apex court has held that looking to the misconduct of remaining absent for some days without submitting leave report, punishment of dismissal is harsh and unjustified and disproportionate and, therefore, the apex court has granted reinstatement with some back wages, to the facts of each case. Therefore, in my view, the labour court has given well reasoned order for reinstatement of the respondent with 25% of backwages and for denying 75 % of the back wages by way of punishment. The labour court is quite justified in passing the order of reinstatement with continuity of service 25% of the back wages in exercising

discretionary powers vested init under sec. 11A of the Industrial Disputes Act, 1947. Therefore, the labour court has committed no error while passing the impugned judgment and award. No infirmity has been pointed out warranting interference at the hands of this Court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. In view of the above, both the petitions are required to be dismissed and, therefore, I pass the following order. Both these petitions are dismissed. Rule in both the petitions is discharged. There shall be no order as to costs.

While admitting the petition filed by the Gujarat Road Transport Corporation against the workman, this Court has not granted any interim relief either against the reinstatement or against the payment of back wages as per the award of the labour court. Therefore, by this time, said amount must have been paid to the workman. However, if the same has not been paid so far, the petitioner corporation in special civil application no. 2605 of 1989 shall pay the same to the respondent therein within twomonths from the date of receipt of certified copy of this judgment.

1.10.1999. (H.K.Rathod,J.)

Vyas